



*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

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Director  
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Jerome A. Brooks  
Regional Director

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENFORCEMENT ACTION - ORDER BY CONSENT**

**ISSUED TO**

**Shoosmith Bros, Inc.**

**VPDES General Permit No. VAR051686**

**Solid Waste Permit No. 587**

**Shoosmith Sanitary Landfill**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455 and §62.1-44.15, between the Virginia Department of Environmental Quality, and Shoosmith Bros, Inc. ("Shoosmith"), regarding the Shoosmith Sanitary Landfill, for the purpose of resolving certain violations of the State Water Control Law, Virginia Waste Management Act, and their applicable regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b), and Va. Code §62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.

5. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means: a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
6. "Facility" means the Shoosmith Sanitary Landfill located at 11800 Lewis Road in Chester, Virginia, 23831.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15 or Va. Code § 10.1-1455.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
9. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
10. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Department, are "pollution." Va. Code § 62.1-44.3.
11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
12. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
13. "Shoosmith" means Shoosmith Bros, Inc., a business entity authorized to do business in Virginia, and the owner and operator of the Facility. Shoosmith is a "person" within the meaning of Va. Code § 10.1-1400.

14. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
15. "VPDES Permit" means Virginia Pollutant Discharge Elimination System Permit No. VAR051684, which was issued under the State Water Control Law and Regulation to Shoosmith on July 1, 2019.
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "SW Permit" means Solid Waste Permit No. 587, which was issued under the Virginia Waste Management Act to Shoosmith on December 6, 1995.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1408.1 through 10.1-1413.1) of the Virginia Waste Management Act.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Shoosmith owns and operates the Shoosmith Sanitary Landfill located at 11800 Lewis Road in Chester Virginia. Shoosmith received coverage under VPDES Permit No. VAR051684 effective July 1, 2019 for discharge of stormwater at the Facility in strict compliance with the terms and conditions of the VPDES Permit.
2. On September 29, 1976, Shoosmith was granted Permit No. SWP 211 to operate a sanitary landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Virginia Department of Environmental Quality. Permit No. SWP 211 was subsequently replaced with Permit No. SWP 587 by the Department on December 6, 1995 for the disposal of municipal solid waste at the Facility in strict compliance with the terms and conditions of the SW Permit.
3. State waters affected by Facility operations include Swift Creek - James River Basin (Appomattox River Sub-basin). During the 2020 Water Quality Assessment 305(b)/303(d) Integrated Report, Swift Creek was identified a Category 5A waterbody ("A Water Quality Standard is not attained. The water is impaired or threatened for one or more designated uses by a pollutant(s) and requires a TMDL (303d list).") The Aquatic Life Use is impaired due to an altered benthic community and low dissolved oxygen. The Recreation Use is assessed as fully supporting. The Wildlife Use and Fish

Consumption Use were not assessed. The Facility is not addressed in the Appomattox River Basin Bacterial Total Maximum Daily Load (“TMDL”), which was approved by the U.S. Environmental Protection Agency (“EPA”) on August 30, 2004 and the Virginia State Water Control Board (“SWCB”) on December 20, 2005. The Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and submerged aquatic vegetation criteria in the Chesapeake Bay and its tidal tributaries. The site drains to the Appomattox Tidal Freshwater estuary (“APPTF”). All regulated stormwater discharges receive aggregated wasteload allocations. The subject segment of Swift Creek is identified a Tier 1 water due to the Aquatic Life Use impairments.

4. A VPDES compliance inspection was conducted at the Facility by the Department on June 21, 2021 and Department staff made the following observation.
5. At the time of the inspection, construction was underway to add additional gas collection lines throughout the landfill.
6. Landfill gas condensate was observed discharging into Sediment Basin 8 via a four-inch pipe identified as landfill gas transfer piping. Sediment Basin 8 was discharging via Outfall 008 to Swift Creek. The Department collected samples of the discharge and receiving stream. Elevated BOD5, TSS, ammonia, color, odor and specific conductivity were observed in the receiving stream consistent with landfill wastewater. Shoosmith also took samples upstream and downstream of Outfall 008; there was no measurable difference in the sample results. Nonetheless, vacuum trucks were deployed to drain Sediment Basin 8 and related drainable ditches. The water collected was directed to the Facility’s leachate collection system. On June 22, 2021, Department staff subsequently observed that the discharge was capped and secured, and no further release of liquids occurred.

Va. Code § 62.1-44.5(A) states, “Except in compliance with a certificate or permit issued by the Department or other entity authorized by the Department to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses . . . .”

9 VAC 25-31-50(A) states, “Except in compliance with a VPDES permit, or another permit, issued by the Department, it shall be unlawful for any person to: 1. Discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such State waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of

such waters for domestic or industrial consumption, or for recreation, or for other uses.”

9 VAC 20-81-140.A.6 (b)-(c) states, “Landfills shall not . . . b. Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act (33 USC § 1251 et seq.), including, but not limited to, the VPDES requirements and Virginia Water Quality Standards (9VAC25-260). c. Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under § 208 or 319 of the Clean Water Act (33 USC § 1251 et seq.), as amended or violates any requirement of the Virginia Water Quality Standards (9VAC25-260).”

VPDES Permit Part I.B.1 states, “Except as provided in this section or in Part IV (9VAC25-151-90 *et seq.*), all discharges covered by this permit shall be composed entirely of stormwater.”

7. Department staff conducted compliance inspections on December 2, 2020, February 24, 2021, June 30, 2021, and September 15, 2021. Observations from each of the inspections are described below.
8. At the June 30, 2021 inspection, Department staff requested that certain operational records be submitted by July 9, 2021 for review, and were not timely received. These records include: a) Unauthorized Waste Random Load Inspection forms; b) Facility Self-Inspection forms; c) Waste Intake records; d) a revised Operations Manual, including Appendices; e) Special Waste Disposal totals; f) Odor Logs; g) Leachate Discharge totals; and h) Leachate Seep Maintenance follow-up documentation. At the September 15, 2021 inspection, Department staff requested that certain operational records be submitted to DEQ by September 22, 2021 for review and were not timely received. These records include: a) Unauthorized Waste Random Load Inspection forms; b) Facility Self-Inspection forms; c) a revised Operations Manual, including Appendices; and d) Leachate Discharge totals.

9 VAC 20-81-100.E.5(c) states, “Records of all inspections, to include at a minimum time and date of the inspection, the personnel involved, the hauler, the type of waste observed, the identity of the generator of the waste if it can be determined, the location of the facility where the waste was handled prior to being sent to the landfill, and the results of the inspection. All records associated with unauthorized waste monitoring and incidents shall be retained onsite for a minimum of three years and shall be available for inspection by the department.”

9 VAC 20-81-140.A.16 states, “Self-Inspection. Each landfill shall implement an inspection routine including a schedule for inspecting all applicable major aspects of facility operations necessary to ensure

compliance with the requirements of this chapter. Records of these inspections must be maintained in the operating record and available for review.”

9 VAC 20-81-140.A.17 states, “Records to include, at a minimum, date of receipt, quantity by weight or volume, and origin shall be maintained on solid waste received and processed to fulfill the applicable requirements of the Solid Waste Information and Assessment Program under 9VAC20-81-80 and the Control Program for Unauthorized Waste under 9VAC20-81-100 E. Such records shall be made available to the department for examination or use when requested.”

9 VAC 20-81-485.A states, “An operations manual shall be prepared and maintained in the operating record. The operations manual shall include a certification page signed by a responsible official. This signature shall certify the manual meets the requirements of this chapter. This manual shall be reviewed and recertified annually (by December 31 of each calendar year) to ensure consistency with current operations and regulatory requirements, and shall be made available for review by the department upon request.”

SW Permit Major Amendment No. 13, Part I.B.6 (February 11, 2016) states, “The permittee shall furnish to the Director, within a reasonable time, any relevant information that the Director may request to determine compliance with this permit, regulations or the Act. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit by the date specified in the request.”

9. At the February 24, 2021, June 30, 2021, and September 15, 2021 compliance inspections, mud and debris were tracked onto Rt. 10 (Iron Bridge Road) in both directions (East/West) outside the Facility entrance, causing fugitive dust to be generated on public roads. The Facility entrance is shared by a number of other industrial operations, including Vulcan Materials, Le Hy Paving and Shoosmith Construction, Inc.

9 VAC 20-81-140.A.12 states, “Fugitive dust and mud deposits on main offsite roads and access roads shall be minimized at all times to limit nuisances. Dust shall be controlled to meet the requirements of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40.”

10. At the December 2, 2020, February 24, 2021, and June 30, 2021 compliance inspections, cracks and rills were observed on the side slopes of Cells P23 and P26 where intermediate cover was applied. Leachate from Cell P23 was observed pooling in Cell 25 on December 2, 2020, February 24, 2021, and June 30, 2021. No additional cover material was observed on the cracks or rills until September 15, 2021.

9 VAC 20-81-140.B.1.d states, “Intermediate cover of at least six inches of additional compacted soil shall be applied and maintained whenever an additional lift of refuse is not to be applied within 30 days. Further, all areas with intermediate cover exposed shall be inspected as needed, but not less than weekly. Additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.”

11. At the December 2, 2020, February 24, 2021, June 30, 2021, and September 15, 2021 compliance inspections, leachate from Cells P23 and 26F was pooling in Cell 25, an unlined Cell under construction. Seeps were detected on September 15, 2021 that resulted in leachate flowing into the stormwater channel at the toe of Cell 6, entering into a stormwater culvert, and draining into an unmarked sediment basin across from Cell 6. On December 2, 2020, February 24, 2021, June 30, 2021, and September 15, 2021, leachate seeps were flowing from Cell 24 into storm water channels that drained to Sediment Basin 11. Recurrent leachate seeps were also observed in stormwater channels along the access road adjacent to the asphalt plant and the toe of Cell 23.

9 VAC 20-81-210.D states, “. . . [L]eachate shall be: 1. Discharged directly or after pretreatment into a line leading to the publicly owned treatment works or other permitted wastewater treatment facility; 2. Transported by a vehicle to an offsite permitted wastewater treatment facility; 3. Recirculated within the landfill, provided that the irrigated area is underlain by a composite liner or other liner system approved by EPA or Research, Development, and Demonstration plan for recirculation, and that the operation causes no runoff, ponding, or nuisance odors; 4. Treated onsite and discharged into surface water when authorized under VPDES permit; or 5. Other methods of treatment or disposal as approved by the department.”

9 VAC 20-81-210.F states, “Leachate seeps. If a leachate seep(s) occurs, the owner or operator shall repair the seep(s) and do the following: 1. Take all immediate steps necessary to protect public health and safety including those required by the contingency plan. 2. Take immediate action to minimize, control, or eliminate the seep, and to contain and properly manage the leachate at the source of the seep. 3. Any leachate released outside the lined area permitted for waste disposal shall be properly collected and disposed.”

12. At the June 30, 2021 compliance inspection, GWMW-103D was observed to have its cover removed, due to grading and capping activities in Cell 26A. Casing was lying prone on the ground near the edge of the liner between Cells 26A and 24. When the grading and capping work was complete, Shoosmith attempted to return the cover and return the well to its location. At that time, in August 2021, Shoosmith determined that the well was damaged and could not be repaired. Shoosmith then sought approval from DEQ on August 9, 2021 for installation of a replacement well. Due to the fact that DEQ

observed the well without its casing on June 30, DEQ initially cited Shoosmith for failure to timely notify Department staff of well non-performance and requirement for repair. DEQ later learned of this sequence of events from Shoosmith's contractor, LaBella Associates.

9 VAC 20-81-530.C.3 states "The permittee shall report to the department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the circumstances and its cause; the period of occurrence, including exact dates and times, and, if the circumstance has not been corrected, the anticipated time it is expected to continue. It shall also contain steps taken or planned to reduce, eliminate, and prevent reoccurrence of the circumstances resulting in an unusual condition or noncompliance."

SW Permit Major Amendment No. 13, Part X.B.1.b (February 11, 2016) states, "Wells requiring replacement due to non-performance shall be reported to the Department within 30 days of recognizing the non-performance. The notification shall include a site plan depicting the proposed location for the replacement well(s) for Department review [530.C. 1]."

SW Permit Major Amendment No. 13, Part X.B.1.c (February 11, 2016) states, "Wells that require replacement must be replaced prior to the next regularly scheduled groundwater sampling event unless the Director has granted an extension to meeting the monitoring system compliance requirements under 250.A.3.a."

13. VPDES NOV No. W2021-11-P-0001 was issued on November 1, 2021 and Solid Waste NOV No. 2021-11-PRO-601 was issued on November 1, 2021 for the violations referenced above. Shoosmith provided a comprehensive response to each of the NOV's on November 15, 2021. Shoosmith also provided a description and status of corrective action taken to address the identified violations.
14. Department staff conducted additional compliance inspections on November 10, 2021, December 6, 2021, March 24, 2022, June 26, 2022, and July 18, 2022. Observations from each of the inspections are described below and incorporated as part of this Consent Order as continuing violations.
15. At the December 6, 2021 compliance inspection, Shoosmith was unable to provide daily, weekly, and monthly operational condition self-inspection logs for July 2020 through August 2021.

9 VAC 20-81-100.E.5(c), *supra* at Par. 7.

9 VAC 20-81-140.A.16, *supra* at Par. 7.

9 VAC 20-81-140.A.17, *supra* at Par. 7.

9 VAC 20-81-485.A, *supra* at Par. 7.

SW Permit Major Amendment No. 13, Part I.B.6 (February 11, 2016),  
*supra* at Par. 7.

16. At the March 24, 2022 compliance inspection, DEQ staff requested that certain operational records be submitted to DEQ by April 1, 2022 for review and were not timely received. These records include: a) Facility Self-Inspection forms from July 2020 through February 2022; and b) Sump Level logs from December 2021 through February 2022. Shoosmith was unable to provide daily, weekly, and monthly operational condition self-inspection logs for July 2020 through August 2021 and December 2021 through February 2022.

9 VAC 20-81-100.E.5(c), *supra* at Par. 7.

9 VAC 20-81-140.A.16, *supra* at Par. 7.

9 VAC 20-81-140.A.17, *supra* at Par. 7.

9 VAC 20-81-485.A, *supra* at Par. 7.

SW Permit Major Amendment No. 13, Part I.B.6 (February 11, 2016),  
*supra* at Par. 7.

17. At the June 26, 2022 compliance inspection, DEQ staff requested that certain operational records be submitted to DEQ by July 1, 2022 for review and were not timely received. Such records include: a) Waste Intake Records from March through May 2022; b) Monthly records of load counts from March through May 2022; c) Facility Self-Inspection forms from July 2020 through May 2022; d) Odor Log reports for July 2020 through May 2022; e) PCB, ACM, and PCS material disposed at the landfill during the review period; and f) Sump Level logs from March through May 2022.

9 VAC 20-81-100.E.5(c), *supra* at Par. 7.

9 VAC 20-81-140.A.16, *supra* at Par. 7.

9 VAC 20-81-140.A.17, *supra* at Par. 7.

9 VAC 20-81-485.A, *supra* at Par. 7.

SW Permit Major Amendment No. 13, Part I.B.6 (February 11, 2016),  
*supra* at Par. 7.

18. On November 10, 2021, DEQ observed an area along the access road, at the toe of Cell 26B, which showed evidence of a leachate spill with residue pooling on both sides of the access road. Seeps were evident at the toe of Cell 26A near the stormwater down-chute flowing into the stormwater drain. A 4-inch leachate drain line pumping leachate from Cell 24 and discharging into the main pump station at Cell 22 was not positioned correctly to discharge liquids into the pump station. Leachate was released onto the ground in an unlined area short of the pump station inlet. Leachate was observed in the concrete storm drain along the access road across from the gas plant. Leachate was also observed pooling in several areas at the toe of Cell 23.

9 VAC 20-81-210.D, *supra* at Par. 10.

9 VAC 20-81-210.F, *supra* at Par. 10.

19. At the June 26, 2022 compliance inspection, leachate was observed flowing from the toe of Cell 23, running from the area of the Condensate tank towards the stormwater channel, and pooling at the culvert on both sides of the access road. Leachate was observed pooling in stormwater channels in Cell 24, in the fore-bay of Sediment Basin 11, at the toe of Cell 2, and the toe of Cell C. Leachate was also observed at Cell 23 near the access road, and pooling within the stormwater channel.

9 VAC 20-81-210.D, *supra* at Par. 10.

9 VAC 20-81-210.F, *supra* at Par. 10.

20. At the July 18, 2022 compliance inspection, leachate was observed flowing from Cell 24 into stormwater channels and pooling into Sediment Basin 11. Seeps were observed at the toe of Cell C that flowed into stormwater channels pooling into the Sediment Basin between Cell C and County Waste MRF. Seeps were also observed flowing and pooling along the access road at Cell 23.

9 VAC 20-81-210.D, *supra* at Par. 10.

9 VAC 20-81-210.F, *supra* at Par. 10.

21. Department staff met representatives from Shoosmith regularly to discuss the NOVs, durable compliance, requirements for corrective action, and enforcement. Shoosmith completed corrective action to address the violations and no further action is required.
22. The Department requested for review a copy of the contract or other agreement, and/or invoices describing services used for cleaning fugitive dust, mud, and other debris from access roads for the period August 1 to October 31, 2022. Shoosmith provided the

requested information on November 28, 2022. A review of the information indicates Shoosmith conducted regular cleaning of access roads for the reporting period.

23. Swift Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
24. Based on the information provided above, the Department concludes that Shoosmith violated Va. Code § 62.1-44.5(A); 9 VAC 25-31-50.A; 9 VAC 20-81-140.A.6.b & c; 9 VAC 20-81-100.E.5.c; 9 VAC 20-81-140.A.12, 16 & 17; 9 VAC 20-81-485.A; 9 VAC 20-81-210.D & F; 9 VAC 20-81-210.D&F; the SW Permit and VPDES Permit as described above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455 and §62.1-44.15, the Department orders Shoosmith, and Shoosmith agrees to:

1. Perform the actions described in Appendix A of this Order;
2. Pay a civil charge of **\$62,300** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Shoosmith shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Shoosmith shall be liable for attorneys’ fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Department may modify, rewrite, or amend this Order with the consent of Shoosmith for good cause shown by Shoosmith, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered

violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Shoosmith admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Shoosmith consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Shoosmith declares it has received fair and due process under the Administrative Process Act, the State Water Control Law and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by Shoosmith to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Shoosmith shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Shoosmith shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shoosmith shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth: a) the reasons for the delay or noncompliance; b) the projected duration of any such delay or noncompliance; c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and d) the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Shoosmith intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Shoosmith. Nevertheless, Shoosmith agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until: a) The Director or his designee terminates the Order after Shoosmith has completed all of the requirements of the Order; b) Shoosmith petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or c) the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Shoosmith.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shoosmith from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Shoosmith and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Shoosmith certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Shoosmith to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Shoosmith.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Shoosmith voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17 day of February, ~~2022~~ 2023 / Corrected JDR 02222023

  
\_\_\_\_\_  
Jefome A. Brooks  
Department of Environmental Quality  
Piedmont Regional Office, Director

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Shoosmith Bros, Inc. voluntarily agrees to the issuance of this Order.

Date: 12-06-2022 By: Fletcher Kelly VICE PRESIDENT  
Shoosmith Bros, Inc. Official Title

Commonwealth of Virginia  
City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 6<sup>th</sup> day of December, 2022, by J. Fletcher Kelly who is Vice President of Shoosmith Bros, Inc. on behalf of the company.

Shesajeanine Jones  
Notary Public  
7980486  
Registration No.

My commission expires: 11/30/2026

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

**1. Conversion of Records to Electronic Format:** Shoosmith shall implement an electronic recordkeeping system that includes updated inspection forms as specified in the Facility Operations Manual (Table 5; p. 18) (December 30, 2021). Specifically, Shoosmith shall update such forms to include daily observation of any seeps occurring at the Facility. Such forms shall have formatted space to include date, time, location, observation narrative, and actions taken to repair any observed seep. Such system, including the updated forms, shall be implemented within 90 days of the effective date of this Order.

**2. Submittal of Daily Inspection Reports:** Shoosmith shall submit to the Department for review complete Daily Inspection Reports required by the Operations Manual, Appendix III, for a period of **90 days**, beginning on the subsequent first day of the first month from the effective date of this Order. Such reports shall be submitted to the Department pursuant to the following scheduling: Day 1 of each month through Day 14 of each month shall be submitted on Day 15. Day 15 of each month through the last Day of each month shall be submitted on Day 1 of the subsequent month.

**3. Fugitive Dust Plan:** Shoosmith shall memorialize and submit for Department review and approval a Fugitive Dust Plan (FDP) describing measures to address accumulation of dust and mud on Facility access roads. The FDP shall include, but not be limited to, a) a detailed narrative description of the actions that will be taken to minimize dust and mud on access roads; b) the goals and objectives of the plan to remove, reduce, and maintain dust and mud on access roads; c) an evaluation, discussion, and sketch of existing roads, roads prone to dust and mud, and proposed target areas for improved removal, reduction, and maintenance; and d) an evaluation, selection, and discussion of criteria used to employ measures for removal, reduction, and maintenance of access roads. Such FDP shall be submitted for Department review, comment, and approval within **30 days** of the effective date of this Order. Upon approval, such FDP shall be incorporated into the Facility's Operations Manual.

**4.** All submittals and communications associated with this Order shall be forwarded to:

Jeff Reynolds  
Virginia DEQ Piedmont Regional Office  
4949A Cox Road  
Glen Allen, Virginia 23060  
[Jefferson.Reynolds@DEQ.Virginia.gov](mailto:Jefferson.Reynolds@DEQ.Virginia.gov)

Shawn Weimer  
Virginia DEQ Piedmont Regional Office  
4949A Cox Road  
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[Shawn.Weimer@DEQ.Virginia.gov](mailto:Shawn.Weimer@DEQ.Virginia.gov)